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No. 04-115

In The Supreme Court of the United States

CARSON HARBOR VILLAGE, LTD.,
a Limited Partnership dba Carson Harbor
Village Mobile Home Park,

Petitioner,

vs.

CITY OF CARSON, a Municipal Corporation,
CITY OF CARSON MOBILEHOME PARK
RENTAL REVIEW BOARD; and CARSON HARBOR
VILLAGE MOBILEHOME PARK HOMEOWNERS
ASSOCIATION, Real Party in Interest,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner should be allowed to evade the ripeness requirements for as-applied takings claims, which were established by this Court in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), and have been uniformly applied by the Circuits, by *speculating* that the compensation remedy provided by the California courts may prove to be inadequate?

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents City of Carson and City of Carson Mobilehome Park Rental Review Board respectfully submit that this case presents no grounds for review and that review should be denied.

STATEMENT OF THE CASE

This case involves an unremarkable application of the well-settled ripeness test established by this Court in *Williamson County Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), for as-applied takings claims. The claim of Petitioner Carson Harbor Village, Ltd. ("CHV") that the Ninth Circuit decision in this case creates a Circuit split concerning the application of the *Williamson* rule is based on a *mischaracterization* of the decision; there is no Circuit split on the issues presented by this case. CHV's further claim that this Court should decide whether just compensation can consist of payments from third parties rather than from government coffers is essentially a request for an *advisory* opinion as that issue is not raised by this case.

Williamson provides a two-pronged test for determining whether an as-applied takings claim is ripe. In order to state a ripe federal takings claim, a property owner must first (1) obtain a final decision from the local agency concerning how the challenged regulation will be applied to his property (*Id.* at 186); and (2) exhaust state court compensation remedies (*Id.* at 194). *Williamson* also recognizes an exception to the second prong when state

court compensation remedies are inadequate or unavailable. *Id.* at 195. Contrary to CHV's claims, that exception does *not* apply in this case.

CHV claims that a decision of respondent City of Carson Mobilehome Park Rental Review Board (the "Board"), which granted CHV a smaller than requested rent increase, denied CHV a fair return and constituted a taking of CHV's mobilehome park property. CHV *admitted* that it had not satisfied the *Williamson* requirement that it exhaust state court compensation remedies before it filed its takings claim in the District Court.[1] CHV also *admitted* that, in general, the California courts provide an adequate compensation remedy, but claimed that remedy is not available in cases challenging rent control decisions. However, CHV *did not, and could not, point to a single California decision in which the remedy provided by a California court in a rent control case was inadequate.* (App. A-13) The Ninth Circuit, therefore, held that the alleged inadequacy of the California remedy was "highly speculative;" that, at best, CHV had shown only that the remedy was "untested and uncertain;" and that this was insufficient to justify CHV's failure to utilize state court compensation remedies. (App. A-13-14)

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[1] CHV's complaint was brought under 42 U.S.C. §1983 and also alleged violations of substantive due process, procedural due process and equal protection, as well as a pendant state law claim under California Code of Civil Procedure §1094.5. The District Court dismissed these federal claims for failure to state a claim upon which relief can be granted and dismissed the pendant state claim without prejudice. The Ninth Circuit affirmed those rulings and CHV did not challenge those rulings in its petition for rehearing in the Ninth Circuit or in its Certiorari Petition.

CHV's attempt to manufacture a conflict between that ruling and the decisions of other Circuits is based on the *erroneous* assertion that the Ninth Circuit held that state court compensation remedies must be used even "when the state's supreme court has held that inverse condemnation is not available for this class of takings claims." (Petition, First Question Presented) That is *not* what the Ninth Circuit held. Rather, it held that CHV did not show that the remedy provided by the California courts is inadequate and that CHV's takings claim was, therefore, unripe. (App. A-13 and 14)

CHV further attempts to create the impression that this case presents an issue of national importance by claiming that California's procedures "cannot lead to the payment of just compensation by the government" and provides only the "untested prospect of obtaining offsetting revenues from private third parties." (Petition, Second Question Presented) However, this claim is based on a *mischaracterization* of the procedures provided by the California courts and of the California Supreme Court decisions in *Kavanau v. Santa Monica Rent Control Board* ("*Kavanau II*"), 16 Cal.4th 761, 66 Cal.Rptr.2d 672, 941 P.2d 851 (1997), and *Galland v. City of Clovis*, 24 Cal.4th 1003, 103 Cal.Rptr.2d 711, 16 P.3d 130 (2001). Neither *Kavanau II* nor *Galland* involved how just compensation for a taking should be provided nor did either address the person or entity that must provide the compensation when a taking is found. Instead, *Kavanau II* found no taking in the circumstances of that case (*Id.*, 16 Cal.4th at 783) and the plaintiff in *Galland* did not claim a taking (*Id.*, 24 Cal.4th at 1020, 1024). Moreover, *Galland* expressly holds that there are circumstances in the rent control context in

which landlords can state an inverse condemnation, or takings claim, and obtain just compensation from the local government that caused the taking. *Id.*, 24 Cal.4th at 1025. Thus, CHV is mistaken in claiming the California remedy provides only for receiving compensation from third parties and the "important question of national importance" alleged by CHV is not presented by this case. CHV is asking for an advisory opinion.

Thus, the two grounds, a Circuit split and an important issue of national importance, claimed as grounds for granting review in this case do not, in fact, exist. This case does not merit review by this Court and accepting CHV's claim would allow every dissatisfied landlord in the more than 100 California local agencies with rent control ordinances to immediately challenge the application of those ordinances in the federal courts without exhausting state court remedies.

Further, the Court should be aware that CHV has filed an action in the Los Angeles Superior Court (Case No. BS 077148) that challenges the very same decision by the Board on which CHV's takings claim in this case is based. That action is set for trial on October 6, 2004, and final judgment in that case could affect the issues in this case and might obviate the need to address CHV's takings claim.

The Court should also be aware that failure to use state court compensation remedies is not the only reason CHV's takings claim is unripe. Although CHV and the decisions below state it is undisputed that the first, or "final decision," prong of the *Williamson* ripeness test has been satisfied in this case, that is *not* true. The Board and

respondent City of Carson (the "City") asserted in both the District Court and Ninth Circuit that CHV's takings claim was also unripe for failure to satisfy the first prong of the *Williamson* test. (Resp. App. 2, 5) The City's mobilehome rent control ordinance (the "Ordinance") and the Guidelines for Implementing the Ordinance (the "Guidelines") provide for a fair return rent increase application when an applicant thinks the other rent increases allowed by the Ordinance are insufficient to provide a fair return. (Resp. App. 15-17)[2] CHV could have made such an application at the same time it made the rent increase application that is the subject of this action (Resp. App. 15), but did not. As a result, CHV did not provide the information necessary to determine a fair return application (Resp. App. 15-17) and it is impossible to know the highest rent that CHV could charge or the highest return CHV could earn under the Ordinance. The Court should further be aware that the City's motion to dismiss CHV's takings claim was also based on *res judicata* and issue preclusion arising from numerous prior lawsuits brought by CHV against the City and the Board. (App. A-14; B-2 and 3)

Thus, in addition to the lack of grounds for review in this case, there are factual and procedural issues, as well as *res judicata* issues, unique to this case that make it inappropriate for review by this Court.

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[2] The District Court granted the City's request for judicial notice of the Ordinance, the Guidelines for Implementation of the Ordinance, the Resolution granting the rent increase challenged by CHV in this case and the judgments and opinions in several prior lawsuits brought by CHV against the City and the Board. (App. B-3, fn.2)

REASONS FOR DENYING THE PETITION

I. THE NINTH CIRCUIT'S HOLDING IN THIS CASE IS CONSISTENT WITH THOSE OF THE OTHER CIRCUITS AND IS CLEARLY CORRECT

A. Petitioner's Claim That The California Remedy Is Inadequate Is Speculative And Mistaken.

CHV alleged that by granting it a smaller rent increase than it desired, the Board denied CHV a fair return and took its property. The Ninth Circuit upheld the dismissal of this claim as unripe because CHV had not first sought compensation through the California courts. CHV admitted that the second prong of the *Williamson* ripeness test for takings cases requires a claimant to exhaust state court compensation remedies; admitted that, in general, California provides an adequate compensation remedy; and admitted that it had not sought compensation in the California courts before bringing this action. However, CHV attempts to place this case within the exception to *Williamson*'s second prong by claiming that California does not provide an adequate compensation remedy for takings arising in the context of rent control decisions.

CHV's claim is based on an *erroneous* reading of the California Supreme Court decision in *Kavanau II*, *supra*. The landlord in *Kavanau II* had prevailed in an earlier action, *Kavanau v. Santa Monica Rent Control Board* ("*Kavanau I*"), 19 Cal.App.4th 730, 23 Cal.Rptr.2d 244 (1993), which challenged a rent increase granted by the Santa Monica Board as inadequate and unconstitutional. *Kavanau I* remanded the matter to the Santa Monica Board to grant a larger rent increase consistent with the court's opinion and the Board promptly did so. *Kavanau II*, 16 Cal.4th at 767. The plaintiff landlord then filed *Kavanau II*,

claiming entitlement to compensation for a temporary taking.

In *Kavanau II*, the California Supreme Court noted that *Kavanau I* did not state the nature of the constitutional violation found (*Kavanau II,* 16 Cal.4th at 777) and analyzed the facts of *Kavanau I* under both takings and due process precedents (*Id.* at 770-777). In doing so, the California Supreme Court expressly recognized that compensation is required for takings and temporary takings:

> " . . . [t]he property owner may bring an inverse condemnation action, and if it prevails, the regulatory agency must either withdraw the regulation or pay just compensation. Even if the agency withdraws the regulation, the property owner may have a right to just compensation for the temporary taking while the regulation was in effect." *Kavanau II*, 16 Cal.4th at 773, citing to *First English Lutheran Church v. Los Angeles County*, 428 U.S. 304, 317, 321.

Applying the takings precedents of this Court to the facts in *Kavanau I*, the California Supreme Court concluded that "Kavanau's allegations, if true, are not sufficient to establish a taking." *Kavanau II* at 780. Thus, *Kavanau II* did not, as CHV claims, hold that compensation is not available for takings in the rent control context; it found no taking. A finding of no taking based on a particular set of facts cannot be transmuted into a finding that the California courts will not provide just compensation when a taking occurs. However, *Kavanau II* found that the Santa Monica Board had violated substantive due process and held that compensation must be paid to the landlord for that violation in the form of "an adjustment of

future rents that takes into consideration past confiscatory rents." *Id.* at 783. This requirement is now known as a "*Kavanau* adjustment."

Significantly, *Kavanau II* also expressly recognized that situations could arise in which a further compensation remedy might be required because a *Kavanau* adjustment was inadequate. *Id.* at 785. The California Supreme Court's subsequent decision in *Galland v. City of Clovis, supra*, which also involved a rent control decision, further held that a landlord can state an inverse condemnation claim against the government under state law or a takings claim under 42 U.S.C. Section 1983 upon a showing that:

> "(1) that a confiscatory rent ceiling . . . was imposed and (2) that relief via a writ of mandate and a *Kavanau* adjustment is inadequate." *Id.*, 24 Cal.4th at 1025.

CHV ignores this holding in *Galland* and instead cites only to a dissent from the majority holding.

B. The Ninth Circuit, Like The Other Circuits, Finds An Exception to *Williamson*'s Second Prong Only When It Is Almost Certain That State Court Remedies Are Inadequate.

CHV claimed in its District Court and Ninth Circuit briefs, and claims again now, that the writ of mandate procedure provided by California Code of Civil Procedure Sections 1085, 1088.5, 1094.5 and 1005 is inadequate because the most a landlord could obtain if it prevailed would be a writ of mandate setting aside the rent control board's decision and a remand to the hostile board that rendered the invalid decision in the first place. However, it

is clear from *Kavanau II* and *Galland* that a remand would include an order that a *Kavanau* adjustment be provided and that if that adjustment is not sufficient to avoid a taking, a landlord could then state an inverse condemnation or takings claim.

Further, *CHV did not point to a single case in which a landowner had failed to receive adequate compensation through California's procedures.* (App. A-13) As the Ninth Circuit correctly held, it would not be proper to assume the accuracy of CHV's prediction that the remedy provided by those procedures will prove to be inadequate. (App. A-13) CHV now cites to *Montclair Mobilehome Parkowners Association v. City of Montclair*, 76 Cal.App.4th 784, 90 Cal.Rptr.2d 598 (1999) and *Yee v. Mobilehome Park Rental Review Board* ("*Yee III*"), 62 Cal.App.4th 1409, 73 Cal.Rptr.2d 227 (1998), as support for its claim that the California courts will not grant an adequate remedy. However, neither case supports CHV's claim. *Montclair* has no bearing whatsoever on the issues raised by this case. It did not address the adequacy of a particular rent increase or the application of an ordinance, as this case does. Rather, *Montclair* involved a *facial* challenge to an ordinance provision limiting rent increases when a home is sold in place in a mobilehome park, which is commonly referred to as vacancy control, and upheld the ordinance as facially valid.

Yee III was preceded by *Yee v. City of Escondido* ("*Yee I*"), 503 U.S. 519, 523 (1992), which held that vacancy control is not a physical taking, and was also preceded by *Yee v. Mobilehome Park Rental Review Board* ("*Yee II*"), an unreported decision which found a $40 rent increase granted by that Board inadequate, remanded the matter to the Board for a larger increase consistent with the

decision and ordered the trial court to determine the amount of the necessary rent increase because the Escondido Board had not fully complied with the court's order. *Yee III*, 62 Cal.App.4th at 1416. This was all *before* the *Kavanau* decision and *before* the *Galland* decision. In *Yee III*, the Yees claimed a taking based on lost profits before the larger rent increase was granted by the court in *Yee II* and the *Yee III* court remanded the matter with directions to grant a *Kavanau* adjustment to compensate for that lost revenue. *Yee III*, 62 Cal.App.4th at 1425.[3]

As *Hensler v. City of Glendale*, 8 Cal.4th 1, 32 Cal.Rptr.2d 233, 876 P.2d 1043 (1997), explains, judicial review by petition for writ of mandate under Code of Civil Procedure Section 1085 or 1094.5 is part of the administrative process and there is no final decision until that process has been completed. *Id.* at 17. California Code of Civil Procedure Sections 1085, 1088.5 and 1094.5 provide a prompt remedy (a petition for writ of mandate can be set for trial by motion upon 21 to 26 days' notice pursuant to Section 1005) and these procedures are intended to forestall constitutional or other injury by providing prompt relief from erroneous administrative decisions. *Id.* at 27.

CHV further claimed that it would be difficult to collect the *Kavanau* adjustment from the mobilehome owners who rent spaces for their homes in mobilehome parks because they might have moved away. However, because mobilehomes are not really mobile and are sold in place in mobilehome parks, *Yee I*, 503 U.S. at 523, there

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[3] *Kavanau II* was decided after the oral argument in *Yee III* and this issue was decided on supplemental briefs. *Id.*, 62 Cal.App.4th at 1424.

are rarely spaces on which rent is not being paid. And, as explained in *Galland*, if the *Kavanau* adjustment proves inadequate, the park owner will have an inverse condemnation or takings claim.[4]

CHV's claim that the Ninth Circuit decision in this case creates a split with other circuits is based on the *erroneous* assertions that the decision: (1) recognized that the compensation remedies provided by California are inadequate (Petition at 3); and (2) held that a plaintiff must utilize those remedies even though they are inadequate (First Question Presented and Petition at 3). That is not what the Ninth Circuit held. It held that, while CHV presented serious questions concerning California's remedies in the rent control context:

> "the alleged inadequacy of the procedures remains highly speculative. Carson Harbor has not sought a writ of mandate and *Kavanau* adjustment, nor has Carson Harbor identified any landowner who has sought and failed to receive adequate compensation through these procedures. At best, Carson Harbor has merely alleged that new compensation remedies are 'untested or uncertain'" *Del Monte Dunes*, 920 F.2d at 1507. Under our precedents, that is not enough to qualify for an exemption from *Williamson's* second ripeness requirement." App. A-13.

That ruling is consistent with that of the other Circuits, including the Circuit decisions cited by CHV. *Smaad*

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[4] CHV's claim now that payments by third parties cannot constitute just compensation within the meaning of the takings clause was not asserted by CHV until it filed a petition for rehearing in the Ninth Circuit. This claim is discussed in Part II, *infra*.

v. City of Dallas, 940 F.2d. 925 (5th Cir. 1991), cited by CHV, held that before a claimant can be excused from seeking compensation in state court, "it must be certain that the state *would* deny that claimant compensation were he to undertake the obviously futile act of seeking it." *Id.* at 934 (emphasis in original). *Smaad* then dismissed the takings claim as unripe because the "unsettled status of state law does not render the available procedures 'inadequate.'" *Id.* at 936. *Coniston Corp. v. Village of Hoffman Estates* 844 F.2d 461 (7th Cir. 1988), also cited by CHV, was not a takings case, but stated that "suit for just compensation is not ripe until it is apparent that the state does not intend to pay compensation." *Id.* at 463. *Rolf v. City of San Antonio*, 77 F.3d 823 (5th Cir. 1996), another case cited by CHV, explained that "state procedures are inadequate when they '*almost certainly* will not justly compensate the claimant'" and are "adequate even though its law is unsettled whether the claimant would be entitled to compensation." *Id.* at 826-827 (emphasis in the original). *Rolf* concluded that Texas law was unsettled and dismissed the takings claim. Each of these cases held, as did the Ninth Circuit in this case, that state law compensation remedies were uncertain or untested, and dismissed the takings claim as unripe for failure to utilize state court compensation remedies.

The two cases cited by CHV which exempted the claimant from *Williamson*'s second prong applied the very same rule articulated in the above cases and by the Ninth Circuit in this case. However, they involved situations, unlike the situation in this case, in which it was *certain* that the state would not provide compensation. The Ninth Circuit decision in this case is consistent with those of the other Circuits cited by CHV. It is also clearly correct. The

Ninth Circuit has repeatedly held that California's remedies are sufficient (App. A-8) and CHV does not dispute those rulings.

CHV has not utilized California's remedies in this case and cannot point to any case showing that use of the procedures outlined by the California Supreme Court in *Kavanau II* and *Galland* resulted in the denial of adequate compensation for a taking. All that CHV has presented is speculation that those remedies will prove to be inadequate. (App. A-13) The Ninth Circuit held in this case, as have all the Circuit decisions cited by CHV, that uncertain and untested remedies must be used and do not excuse compliance with *Williamson*'s second prong. (App. A-13)

II. THIS CASE DOES NOT PRESENT ANY ISSUE OF NATIONAL IMPORTANCE

In order to create the impression that this case presents the question of whether just compensation may come from third parties rather than from government coffers, CHV wrongly asserts that California's procedures provide only for compensation to be paid by private third parties in cases involving the application of rent control ordinances because it is the tenants who provide compensation by paying both a rent increase and a *Kavanau* adjustment. However, while *Galland* provides for a remand and a *Kavanau* adjustment to *prevent* a taking, it further provides that if a *Kavanau* adjustment does not provide sufficient compensation to avoid a taking, an inverse condemnation or a takings claim can be brought against the governmental agency. *Galland*, 24 Cal.4th at 1025. Thus, this case does not present the question of whether compensation paid by third parties rather than government satisfies the just

compensation requirement of the takings clause. Accordingly, any discussion of that question in this case would necessarily be *dicta* and constitute an advisory opinion.

Moreover, CHV's citations to claim that compensation is "just" within the meaning of the takings clause only if it is paid from government coffers do not support its claim. *"Takings" as Due Process, or Due Process as "Takings"?*, 36 Val. U.L. Rev. 413, 420 n.42 (2002), cited by CHV, is a law review article criticizing Supreme Court takings jurisprudence. The portion cited by CHV addresses the historical criticism of applying the takings clause to regulations instead of just to the physical taking of property and does not address the issue of whether just compensation can ever come from third parties. *United States v. Dickinsin*, 152 F.2d 865 (4th Cir. 1946), also cited by CHV, is a case under the Tucker Act in which the government admitted liability for flooding the plaintiffs' land and the issue was how much each of the plaintiffs should be compensated by the government. The case does not address who must pay the compensation because the government admitted liability and was prepared to provide compensation (*Id.* at 868) and the case has no application to a regulatory taking claim such as that in this case.

III. THIS CASE INVOLVES UNIQUE FACTUAL AND PROCEDURAL ISSUES THAT MAKE IT INAPPROPRIATE FOR REVIEW BY THIS COURT

CHV has filed an action in the Los Angeles Superior Court (Case No. BS 077148) that challenges the very same decision of the Board that CHV challenges in this case and duplicates the pendant state law claim that was dismissed by the District Court when it dismissed CHV's takings

claim as unripe. (App. A-3, fn.2) The state law action is set for trial on October 6, 2004, and the final judgment in that case could affect the issues in this case and might eliminate the need to address CHV's takings claim. Thus, this is not an appropriate case on which to expend Supreme Court resources.

Moreover, failure to exhaust state court compensation remedies is not the only reason CHV's takings claim is unripe. The crux of CHV's takings claim is the allegation that the Board's decision denied CHV a fair return, but CHV has never made a fair return rent increase application as permitted by the Ordinance and Guidelines. The decision that CHV is challenging in this case involves an application based on subsections 1 through 11 of Section 4704(g) of the Ordinance, under which rent increase applications are determined by consideration of eleven factors that address, *inter alia*, changes in income, changes in operating expenses and inflation, and focus on inflation-adjusted profit maintenance. (App. D-9-10; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* ("*Carson Harbor II*"), 70 Cal.App.4th 281, 291; 82 Cal.Rptr.2d 569 (1999)) However, the Ordinance also provides for a fair return application for park owners who think a factor-based application will not permit a fair return. (Resp. App. 15-17, Guidelines §IV) CHV could have joined its factor-based application with a fair return application. (Resp. App. 25) But CHV did not do so and its factor-based application did not provide the information concerning CHV's investment, the rate of return being earned by CHV or the rate of return being earned by other comparable investments, particularly investments in

mobilehome parks, necessary to determine a fair return application. (Resp. App. 15-17, 25)[5] It is, therefore, impossible to know the highest rent that CHV could charge or the highest rate of return CHV could earn under the Ordinance. Thus, CHV failed to obtain a final decision concerning the application of the Ordinance to its property and its takings claim is unripe for that reason as well as for its failure to utilize state court remedies.

Finally, this case involves *res judicata* and issue-preclusion issues that would require dismissal of CHV's takings claim even if it were ripe. Neither the District Court nor the Ninth Circuit reached this issue. (App. A-14, fn.6; App. B) Thus, *if* the issues in this case are not mooted by a final judgment in the state court action, *if* CHV could be exempted from the second prong of *Williamson*, and *if* it could be held that CHV has satisfied the first *Williamson* prong, it would still be necessary to address the issue preclusion arising from *four* prior actions by CHV against the City and Board, each of which resulted in a judgment adverse to CHV. (App. B-3)

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[5] The original version of these Guidelines was adopted in 1994 and the revised Guidelines cited herein were adopted in 1998. The statement in the Ninth Circuit opinion in this case suggesting its prior decision in *Carson Harbor Village, Ltd. v. City of Carson* ("*Carson Harbor I*"), 37 F.3d 465, 475 (9th Cir. 1994), established that the first prong of *Williamson* was satisfied by the application that is the subject of this action is mistaken. At the time *Carson Harbor I* was briefed and argued, the Guidelines providing for a fair return application had not been adopted.

CONCLUSION

This case does not present any grounds for review by this Court. It involves a routine application of the second prong of the *Williamson* ripeness test for as-applied takings claims, is consistent with decisions of the other Circuits applying the *Williamson* test, is consistent with *Williamson*, and is clearly correct. Further, this case presents no issue of national importance. CHV's claims to the contrary are based on a mischaracterization of the Ninth Circuit's decision in this case and a mischaracterization of the relevant California cases and procedures.

Moreover, there are factual and procedural issues unique to this case that make it inappropriate for review by this Court. Accordingly, the City and Board respectfully submit that the petition for writ of certiorari should be denied.

DATED: August 18, 2004

Respectfully submitted,

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARSON HARBOR VILLAGE, LTD., a California Limited Partnership dba Carson Harbor Village Mobilehome Park,

Plaintiff,

v.

CITY OF CARSON, a municipal corporation; THE CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD,

Defendants.

Case No. 01-04799-RJK (RZx)

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND IN THE ALTERNATIVE FOR ABSTENTION; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE: August 27, 2001
TIME: 10:00 a.m.

COURTROOM OF THE HONORABLE ROBERT J. KELLEHER (Room 840)

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 27, 2001 at 10:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Robert J. Kelleher, United States District Court Judge located in Room 840 at 255 E. Temple Street, Los Angeles, California, 90012, Defendants City of Carson (the "City") and City of Carson Mobilehome Park Rental Review Board (the "Board") will and do hereby move for an order dismissing the complaint and each of the counts therein pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and

* * *

Further, any claim by CHV that it has been denied a fair return is not ripe because CHV has not obtained a final decision concerning the rent that would be allowed under a fair return rent increase under the Guidelines. CHV has never filed such an application. (Ex. L, p. 287, § 3f); ***Williamson, supra***. *CHV* should not be able to decline to file a fair return application and withhold information concerning its return in the proceedings before the Board and then seek § 1983 damages for denial of a fair return rent. As ***CHV 5*** (70 Cal.App.3d at 291) and the Guidelines (Ex. B, p. 7, § IIB) explain the factor based rent increase application process unitized by CHV protects gross profit levels by adjusting the profit level upward, after subtracting reasonable operating and maintenance expenses, based on the increase in the CPI, or a portion thereof, since the last rent increase hearing to adjust for inflation. While that process estimates fair return it is not the same thing as fair return (***Kavanau II***, 16 Cal.4th at 777-778, and CHV had the right, which it did not pursue,

to join a fair return application with its factor based, gross profit maintenance application.

* * *

APPENDIX B

C.A. No. 02-56213

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARSON HARBOR VILLAGE, LTD.,
a Limited Partnership dba Carson Harbor
Village Mobile Home Park,

Plaintiff-Appellant,

vs.

CITY OF CARSON, a Municipal Corporation, et al.,

Defendants-Appellees.

CARSON HARBOR VILLAGE MOBILEHOME PARK
HOMEOWNERS ASSOCIATION, Real Party in Interest,

Defendant.

APPELLEE'S ANSWERING BRIEF

On Appeal From The Judgment of the
United States District Court, Central District of California
The Honorable Robert J. Kelleher
U.S.D.C. No. CV 01-4799 RJK

ROCHELLE BROWNE, STATE BAR NO. 75953
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CITY OF CARSON

* * *

property and CHV itself labels Counts 2 and 6 as takings claims. In these circumstances, all of CHV's claims under § 1983, whether labeled as substantive due process, procedural due process or equal protection, are unripe because CHV has admittedly not utilized state court compensation remedies.[6] In fact, CHV's § 1983 challenge to the Board's 1998 rent increase decision, which CHV labeled a substantive due process claim, was dismissed by this Court for lack of subject matter jurisdiction precisely because CHV had not utilized state court compensation remedies. (*CHV 7*, City Excerpts: 318-319)[7]

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[6] The District Court declined to apply these authorities to CHV's equal protection and procedural due process claims and dismissed them for failure to state claims. As discussed in Parts VII and VIII, *infra*, that ruling on the merits was clearly correct. However, the City submits these claims should also have been dismissed as unripe because they all challenge the same Board decision and treating them as ripe could have the very same result as that criticized by this Court in *Armendariz, i.e.*, it would allow CHV to proceed in federal court on a clearly unripe takings claim and, thus, bypass state court compensation remedies. *Id.*, 75 F.3d at 1325-26 (overruling that result in *Sinuloa Homeowners Ass'n v. Simi Valley*, 882 F.2d 1358 (9th Cir. 1989)).

[7] The District Court did not reach the City's claim that CHV's allegation that it has been denied a fair return, which is the basis for the takings claim and the substantive due process claim, are unripe because CHV never made a fair return rent application so that there is no basis for determining what would be the highest rent allowed to CHV under the Ordinance. (*See* City's moving papers, City's Excerpts: 24). However, CHV's failure to seek a fair return increase is yet another ground on which this Court could affirm the District Court's dismissal of CHV's takings and substantive due process claims as unripe.

APPENDIX C

Excerpts of the Guidelines for Implementation of the Mobilehome Space Rent Control Ordinance

These Guidelines are intended to assist the Board in implementing the Ordinance. However, the purpose of the Ordinance and the provisions of the Ordinance are controlling.

I. Purpose and General Principles

A. The purpose of the Ordinance is to protect the homeowners who rent spaces in mobilehome parks in the City from excessive rents and to allow Park Owners to earn a "just and reasonable" or "fair" return on investment. Mobilehome owners ("homeowners") are a uniquely vulnerable group of tenants due to the investment made in purchasing and maintaining their homes and the high cost and difficulty involved in attempting to move a home. Additionally, many of the homeowners in the City are seniors on fixed incomes and many have low or moderate incomes. Unlike apartment tenants, homeowners cannot just pack their personal belongings and move if rents increase to a level they cannot afford. In order not to lose the considerable investment made in purchasing and maintaining their homes, they must either sell their home in place in the park or move their home if they cannot afford the rent. However, it is very costly to move a home and even when vacant spaces are available in the surrounding area, the parks having those vacant spaces often restrict them to rental by new mobilehomes and will not accept homes being relocated from another park. Thus, moving the mobilehome is not generally a feasible alternative. A homeowner who can no longer afford the rent must

sell the home quickly to avoid being evicted or defaulting on the mortgage on the home. However, excessive rents make a home difficult to sell and often require the homeowner to sell the home at a price which is insufficient to allow recovery of the investment made in the home.

B. Prior approval of the Board is required before any rent increase may be charged unless a specific exception is provided in the California Mobilehome Residency Law, Civil Code § 798, et seq. That Law exempts spaces subject to long term leases meeting its requirements from local regulation. It also exempts increases in utility charges under certain circumstances and exempts newly constructed spaces, as defined by the Mobilehome Residency Law.

C. The Ordinance assumes that the profit earned by park owners when the Ordinance was adopted provided a fair return because it was based on rents chosen by the owners prior to regulation. (see §I(F) re rebutting this assumption) The Ordinance, therefore, uses the factors in § 4704(g) to focus on changes in a park's income, expenses and circumstances, including changes in the general economy, to determine whether a rent increase is appropriate to allow the owner to keep earning a fair return, and when a rent increase is appropriate to determine the amount of that increase. The factors also require the Board to consider any changes in the maintenance, services and amenities provided and rents for spaces in comparable mobilehome parks in the City and any change in the Consumer Price Index ("CPI") since the last hearing on an application by a park. A decrease in, or elimination of, services, maintenance or amenities may constitute a de facto rent increase in violation of the Ordinance and increases in the CPI may, in certain circumstances, indicate

the need for a rent increase to offset the erosion of profit by inflation.

D. No one factor in the Ordinance is determinative and the factors must be considered together and balanced in light of the purposes of the Ordinance and all the relevant evidence. The Ordinance does not mandate the use of any formula or guarantee increases equal to the increase in the CPI, or any percentage of the CPI.

E. Each park owner had the right to rebut the assumption that the rents set before the Ordinance was adopted provided a fair return when the park owner applied for the park's first rent increase, but cannot challenge the decisions of the Board except by legal challenge as provided in Ordinance §4708(c). When the Board grants a rent increase it is making a determination that the rent approved is "fair, just and reasonable." In other words, the Board determined that the rent approved was not excessive and allowed the park owner a fair return. The Board cannot reconsider its decisions on a rent adjustment application after they have been embodied in a formal written resolution setting forth the findings of the Board. Therefore, each rent increase application after the first application is evaluated only on the basis of changes in income, expenses, profit, the CPI, maintenance, amenities and services that have occurred since the date of the last increase approved by the Board. A park owner or homeowner who wishes to challenge the decision may do so by seeking review in the courts, as set forth in §4708(c) of the Ordinance.

F. Notwithstanding Section D above, each park owner has the right to apply for an increase on the ground that existing rents do not allow the park owner to earn a

fair return, as set forth in §IV below, in addition to an increase based on the factors in § 4704(g).

II. Income, Operating Expenses And Profit

A. An applicant must provide the most current data which is reasonably available concerning its income, expenses and profit. In general, an application should include expenses, income and profit documentation for all years subsequent to those for which data was supplied with the last application through at least six months prior to the date of the application. An application that does not provide income, expense and profit data for the period between the date of the data submitted for the last increase application through six months prior to the date of the current application will be deemed incomplete unless satisfactory reason is shown why such data cannot be supplied. (For example, records destroyed by fire, flood, etc., new owner cannot obtain files going back to date of last application.) The necessary data may be provided by calendar year, fiscal year or any other 12 month period selected by the applicant provided that the same 12 month period is used for all data supplied and the applicant utilizes the same 12 month period (e.g., July 1, 1993 through June 30, 1994, January 1, 1993 through December 31, 1993, April 1, 1993 through March 31, 1994) each time it applies for a rent increase. If an applicant changes the 12 month reporting period used, the applicant will have to supply calendar year data for the years since the last increase as well as data presented according to the newly selected 12 month reporting period.

1. Income includes rents, fees for services not included in the rent such as RV parking, cable TV, security,

etc., and any other income derived from the Park. Income from utilities is not income within the meaning of the Ordinance. No fee may be charged in addition to the rent for a service that was included in the rent charged when the Ordinance was adopted, except as otherwise provided in the Mobilehome Residency Law.

2. Examples of operating expenses are taxes, utility costs paid to a public utility if not billed separately, maintenance (except maintenance of utilities which is to be paid for from utility income pursuant to PUC ruling), repairs, management and accounting services. All expenses may be reviewed for reasonableness.

a. Owner performed labor is generally an allowable operating expense so long as the amount and type of labor performed is documented and is not duplicated by expenses paid to others.

b. Fees paid to management companies not in excess of 5% of gross rents are generally allowable; higher fees are not generally allowed unless justified by the applicant. Costs incurred for resident managers are allowable in addition to off-site management expenses so long as there is no evidence of duplication of services.

c. Land lease payments are generally an allowable operating expense only when paid to a landowner other than the park owner. Lease payments made by a park owner to an entity owned by the park owner will generally be deemed profit rather than an operating expense.

d. Debt service incurred prior to adoption of the Ordinance to purchase or operate the park is generally an allowable operating expense.

e. Debt Service necessarily incurred to operate the park after adoption of the Ordinance is generally an allowable operating expense if the financing arrangements were prudent and consistent with customary business practice.

f. Debt service incurred after adoption of the Ordinance to purchase a park may be an allowable operating expense if the purchase price paid was reasonable in light of the rents allowed under the Ordinance and involved prudent and customary financing practices. An applicant shall have the burden of establishing the reasonableness of the purchase price and financing procedures. If the applicant relies on an appraisal, the appraiser must be available for questioning at the hearing. Any other person relied upon must also be available at the hearing. When it is determined that some increase in debt service was reasonably necessary to acquire the park, but that the amount incurred was not reasonable in light of the Ordinance and customary and prudent financing practices, then only the appropriate portion of the debt service incurred may be allowed as an operating expense. The reason for these general rules is that passing on increased debt service due to purchases at prices above those that can be justified by the income earned by the park under rent control or incurred by unusual financing methods, such as 100% financing, would defeat the purpose of rent control.

g. Debt service incurred in making capital improvements to a park may be recovered pursuant to the Capital Improvement Rent Increase provisions set forth below and is not an allowable operating expense.

h. Principal payments on a mortgage are not an allowable operating expense.

i. Reasonable attorneys' fees directly incurred in operating a park are generally allowable operating expenses. Attorneys' fees incurred in presenting applications to the Board, for enforcing court rules or for eviction are examples of fees that are allowable operating expenses. Examples of attorneys' fees which are not allowable are those incurred in connection with challenging the Ordinance or decisions of the Board or in connection with litigation seeking to recover damages or reimbursement from third parties or the City.

j. Charitable and political contributions are not allowable operating expenses.

k. If the operating expenses submitted for a park show a significant increase in expenses which is not due to the increased cost of regular operating expenses, is for an item which is not normally recurring, or is due to accumulating significant expenses in a single year instead of spreading them pursuant to a regular maintenance schedule, or if the expenses for a year are unusually low, the Board may consider the average of the park's last three years of expenses. The Board may consider the pattern of a park's income and expenses instead of focusing on the income and expenses for a single year in order to avoid unreasonable results.

l. An operating expenditure which covers expenses for more than one year may be pro-rated over the years to which it is attributable even if the cost thereof is paid all in one year in order to avoid unreasonable results. An example of such an operating expense is an insurance premium which covers two or three years. An operating

expense which is financed shall also be pro-rated over the life of the loan by which it was financed.

B. *Gross Profits Maintenance Analysis.* In evaluating a rent increase application, the Board may consider, in addition to the factors specified in §4704(g) of the Ordinance, a "gross profits maintenance analysis," which compares the gross profit level expected from the last rent increase granted to the park prior to the current application ("target profit") to the gross profit shown by the current application. This analysis will be included in the staff report to the Board in addition to analysis concerning the eleven factors when there is sufficient data to permit such an analysis.

The analysis is intended to provide an estimate of whether a park is earning the profit estimated to provide a fair return, as established by the immediately prior rent increase, with some adjustment to reflect any increase in the CPI. The analysis is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in §4704(g), other relevant evidence presented and the purposes of the Ordinance. The analysis is not intended to create any entitlement to any particular rent increase.

III. Comparable Parks and Changes in Services, Maintenance and Amenities

A. Comparable Parks. The Ordinance directs the Board to consider rents in comparable parks in the City. Consideration of the rents for spaces in comparable mobilehome parks can assist the Board in determining the range of reasonable rents for a particular park. The reason the Ordinance specifies parks in the City is that comparison to

rents in parks outside the City which are not subject to rent control would promote the excessive upward pressure on rents that the Ordinance is designed to avoid. Rents in unregulated markets are the result of the unequal bargaining power which arises from the shortage of spaces for relocating homes and the cost and difficulties inherent in trying to relocate a home. The Ordinance is designed to prevent the excessive rents that can occur in such a market absent regulation. Even if evidence were submitted showing a park in a neighboring jurisdiction with rent control to be comparable in quality, amenities, services and location, evidence would be required concerning the nature of the rent control regulations in effect in that jurisdiction during the period from 1979 to the present before the Board could determine whether the park was comparable within the meaning of the Ordinance. Parks subject to the Los Angeles County mobilehome rent regulation ordinance have not been subject to rent regulation at all times since the adoption of the Carson Ordinance and were not and are not now subject to similar rent regulation. Therefore, rents in spaces in parks in unincorporated areas of Los Angeles County are not comparable within the meaning of the Ordinance. Newly constructed spaces, as defined by the Mobilehome Residency Law, are also not comparable spaces within the meaning of the Ordinance even when they are located in City because the rents for those spaces are exempt from rent control and have never been subject to rent regulation.

B. *Changes in Park Amenities, Services and Maintenance.* There is a range of rents or zone of reasonableness which will permit a fair return. Decreases in amenities, services and maintenance may indicate that a lesser increase within the zone of reasonableness is appropriate

and increases in services, amenities and maintenance may indicate that a greater increase within the zone of reasonableness is appropriate. Further, the elimination of or decrease in maintenance, services and amenities may constitute a de facto rent increase imposed without the approval of the Board in violation of the Ordinance and may, in some circumstances require a decrease in the rent increase that might otherwise be granted or the denial of a rent increase.

IV. OTHER RELEVANT EVIDENCE AND FAIR RETURN

A. The Ordinance is based on the assumption that the rents in effect before the adoption of the Ordinance provided a fair return and park owners attempted to rebut that presumption when they first applied for an increase. Most applications submitted to the Board have been based on the factors in the Ordinance and Park Owners rarely offer evidence concerning their investment in a park, the return being earned on the park or the return being earned by comparable mobilehome parks. However, an applicant may file an application based on the claim that a rent increase is necessary because the park cannot earn a fair return without an increase greater than that permitted by application of the factors in the Ordinance as well as on the grounds provided by the factors in the Ordinance. Such an application must be made at the same time as a regular rent increase application and must include the following information, including supporting documentation and testimony, as well as the information concerning income, expenses and profit which is ordinarily required:

1. The date the applicant purchased the park and the purchase price of the park. If the park was purchased after the adoption of the Ordinance, the applicant shall also provide the rents charged, the net operating income of the park prior to the purchase and an appraisal of the park at the time of purchase. Net operating income means gross income minus allowable operating expenses (as set forth above) minus debt service. The appraiser performing the appraisal and preparing any appraisal report will be required to attend the hearing on the rent increase application.

2. Any down payment made upon purchase of the park and the total amount of equity in the park on the date of the application. Any refinancing of the park since the date of purchase and whether the proceeds of the refinancing were used to improve the park or for other purposes.

3. Any capital improvements made to the park, the cost thereof and whether that cost was recovered by a capital improvement rent increase.

4. The Overall Rate of Return (ratio of net operating income to purchase price) being earned by comparable mobilehome parks in jurisdictions with and without rent control at the time of the application. The Overall Rate of Return being earned by the applicant's park (after making any adjustments to the purchase price necessary as a result of purchase after the adoption of rent control). Other measures of the rate of return being earned on the applicant's park and comparable parks and other evidence considered relevant by the applicant may also be submitted, but the Board is concerned with return on investment. It will not consider return based on the

current fair market value of a park or the value of park property for purposes other than use as a mobilehome park. Any expert relied upon concerning the return being earned by the applicant or comparable parks or investments must be available for testimony and questioning at the hearing. Since mobilehome parks are unique investments, it is unlikely that the return on other types of investments would be found relevant by the Board. Thus, the return on investments which do not have the potential for appreciation in value are not relevant. Similarly, comparison to the return being earned by other residential rental property is not likely to be relevant since the owners of such properties must maintain the actual housing units whereas the owners of mobilehome parks do not have this responsibility or expense because mobilehome owners are responsible for maintaining them and the spaces which they rent. The owners of apartment complexes incur expenses in re-renting vacant units which are not incurred by mobilehome park owners and apartment owners experience a much higher vacancy rate. In the case of mobilehome parks, the existence of a vacant space is uncommon since homes are usually sold in place and rent is generally paid on a space so the home can remain on the space until it is sold even if the owner has moved out. Further, the residents of mobilehome parks invest in improvements which enhance the applicant's investment and this does not occur in other types of residential rental properties.

* * *

APPENDIX D

RESOLUTION NO. 2001-212

A RESOLUTION OF THE CARSON MOBILEHOME PARK RENTAL REVIEW BOARD GRANTING A RENT INCREASE FOR CARSON HARBOR VILLAGE MOBILEHOME PARK

THE CARSON MOBILEHOME PARK RENTAL REVIEW BOARD DOES HEREBY FIND, DECLARE AND ORDER AS FOLLOWS:

Section 1. An application was filed by Carson Harbor Village Mobilehome Park, 17701 S. Avalon Boulevard, Carson, California, hereinafter referred to as the "Park," requesting rental increases ranging from $222.65 to $240.73 per space, per month for 407 of the 420 spaces in the Park. Two of the spaces are used for management purposes and eleven of the spaces in the Park were constructed after January 1, 1990 and are, therefore, exempted from the City's Mobilehome Park Space Rent Control Ordinance by the Mobilehome Residency Law.

Section 2. Notice by the City that the rent increase application was substantially complete was sent to the Applicant and the affected residents on October 31, 2000. The notice advised the residents that the application was available for review and that they had 30 days from the date of the notice to submit written comments concerning the application. The time to submit comments was thereafter extended to December 11, 2000 due to mailing problems. Notice of the time, date and place of the hearing before the Board on January 10, 2001 was mailed to the Applicant and the affected residents on December 21, 2000. The hearing was opened on that date and continued to February 28, 2001 at the request of the Applicant who

waived the time limit for decision set by the Ordinance to facilitate the requested continuance. Notice of the continued hearing was mailed to the Applicant and the affected residents on February 13, 2001 the Staff Report was made available to the Applicant, the affected residents' representative and the public on or before February 22, 2001 and the hearing was duly held before the Carson Mobilehome Park Rental Review Board on February 28, 2001.

Section 3. Based upon the evidence received at the hearing, both oral and written, the Board hereby finds:

a. A general rent increase application for the Park was last heard by the Board approximately sixteen (16) months ago on October 27, 1999.

b. The Consumer Price Index for All Urban Consumers in the Los Angeles-Anaheim-Riverside Metropolitan Area (the "CPI") increased 3.74% from September of 1999, the date of the CPI figure used at the last rent increase hearing, through December 2000, the latest date for which the City had figures for the CPI when the Staff Report was prepared. The rent increases requested by the Applicant would constitute increases of 48.14%.

c. (1) The rents at Colony Cove Mobile Estates, the park in the City found to be the most comparable to the subject Park, range from approximately $321 to $428 per space, per month and average approximately $389. They are lower than the rents at the subject Park, which range from $462.50 to $500.07, average $466.14, and are the highest space rents for spaces subject to the Carson Mobilehome Space Rent Control Ordinance. Colony Cove and the subject Park are similar in design and size and have similar amenities, but the subject Park is approximately three years newer than Colony Cove and has

amenities superior to those in Colony Cove. The subject Park contains only double-wide and larger homes, whereas Colony Cove contains single-wide as well as double-wide homes. The security service in the subject Park consists of electronic gates at the entrance to the Park and no separate fee is charged for security, whereas Colony Cove imposes a separate security fee which partially offsets the cost of providing a booth with guards at the park entrance. Expenditures for maintenance have generally been greater at the subject Park than at Colony Cove and rents at the subject Park have been higher than those at Colony Cove at all times since the subject Park first opened in 1978, which was before the City's Mobilehome Space Rent Control Ordinance was adopted in 1979, and some difference in the rent levels is justified by the differences between the two Parks. At the time of the last hearing the differential had risen to approximately $95 per month, but the differential is now approximately $77 due to the subsequent $15.23 decrease in space rents required by the Mobilehome Residency Law when the Park began submetering and separately billing for water usage, which was previously included in the rent.

(2) As with prior rulings of the Board and consistent with the ruling of the court of appeal decision in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Rental Review Board* (1999) 70 Cal.App.4th 281, the Board did not consider the rents in the Park's eleven new spaces to be rents for comparable spaces in the City's mobilehome parks because those rents are not subject to the Ordinance and the Guidelines for Implementation of the Ordinance expressly state that only spaces subject to rent control can be deemed comparable within the meaning of the Ordinance and comparing to unregulated rents would defeat

the purpose of the Ordinance. The Board also did not consider the rents in parks in neighboring portions of the unincorporated area of Los Angeles County that the Applicant claims are comparable because those parks have been unregulated during many periods when the Carson Ordinance was in effect and when those parks have been subject to rent regulation, that regulation allowed rents to rise more rapidly and in greater amounts than has the Carson Ordinance. Further, the Applicant's claim that the Board must consider the rents in these parks has been rejected by a [sic] final judgments against the Applicant in *Carson Harbor Village, Ltd. v. City of Carson,* Los Angeles Superior Court Case No. BS029436 and Second District Court of Appeal Case No. 2nd Civil B095486.

d. (1) The subject application is based on the Park's 1999 operating expenses and income. The Park's operating and maintenance expenses, including taxes and utilities, increased by $54,450 from 1998 to 1999. The Park's gross income increased by $2,911 during that period and its gross profit decreased by $51,539 during that period. Consistent with the Board's prior decisions and the court of appeal decision in *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, these income and expense figures include those attributable to the eleven non-rent controlled spaces because those spaces are an integral portion of the Park, utilize the same amenities as the rest of the Park and are part of Applicant's interest in the entire Park.

(2) Some of the expenses claimed by the Applicant for legal services were not allowed as operating expenses by the Board because those legal services were not provided in connection with operation of the Park and instead involved lawsuits challenging decisions of the

Board, a lawsuit by the Applicant seeking to recover the cost of cleaning up the Park's marsh area from the City of Carson, the City of Compton, Unocal, Caltrans and others and suits against the Park's insurer. The legal fees claimed by the Applicant were therefore reduced as shown at pages 13-14 of the Staff Report and Exhibit C thereto. The Applicant's claim that he should be able to include such fees in his operating expenses was rejected by the court of appeal in *Carson Harbor Village v. City of Carson Rental Review Board,* (1999) 70 Cal.App.4th 281. However, legal fees in the amount of $163,087 incurred in connection with presenting a rent increase application and operating the Park are included in the operating expenses allowed for 1999.

(3) Some expenses claimed by the Applicant were not included because they involve capital improvements rather than operating and maintenance expenses. While the Applicant objected that some of the expenses included should have been allowed as operating expenses, they were part of major renovation of the streets, including asphalt replacement, the clubhouse and the mobilehomes used for the Park managers and are therefore capital improvements under Guidelines §VI(A)(2). While these expenses, which are shown in Exhibit G to the Staff Report, are not included as operating expenses in this application, the Applicant can seek a capital improvement rent increase based on those expenses in addition to the general rent increase sought in this application. The Applicant was given the opportunity to present that capital improvement application at the same time as this application, but chose to defer that application. (See Exhibit B-85 to the Staff Report)

(4) The expenses claimed by the Applicant for demolition of the bridge over the Park's marsh area, as shown in Exhibit H to the Staff Report, were not allowed as operating expenses because removal of that bridge was a violation of the special use permit under which the Park operates, as found by the City at a prior public hearing. A notice of violation was recorded by the City against the Park and a copy of the notice is attached to the Staff Report as Exhibit E. The closure of the bridge was a decrease in the Park's amenities and was a factor in denying a prior rent increase application, as set forth in Board Resolution No. 99-207, a copy of which is attached to the Staff Report as Exhibit F-3. Only reasonable operating and maintenance expenditures are allowable and expenditures incurred in violation of the permit under which the Park operates are not reasonable. Although, the Applicant claimed that demolition of the bridge was mandated by the state, the letter from the state offered by the Applicant to support this claim, which is Exhibit B-49 to 50 to the Staff Report, states that the bridge should be replaced or repaired because it had become unsafe; it does not state that the bridge should be demolished.

(5) As with past applications and as set forth in the Staff Report at page 4 and Exhibits C-2 and C-56, some of the loan interest claimed by the Applicant has not been allowed because the loans at issue, or parts of them, were not incurred for acquisition of the Park or were not used for the operation, maintenance or improvement of the Park. In addition, the Board disallowed the portion of a loan fee incurred to refinance the Park in 1997 and the portion of the interest attributable to the October 1997 interest on the Park's prior first deed, which were claimed as 1999 operating expenses in addition to the interest in

the monthly payments on the new loan that was paid in 1999. The Applicant chose to include the loan fee and October 1997 interest in the principal of the new loan so that the only interest expenditures made by the Applicant in 1999 in connection with the new loan are the monthly payments on the new loan. The interest portion of those payments, which is an interest expense actually paid in 1999, was allowed as an operating expense. Under the Guidelines principal payments are not allowed as operating expenses. The Park has been refinanced several times and each time the Applicant has included any loan fee incurred at the time of refinancing in the principal of the new loan as part of the refinancing and the Applicant has avoided paying these loan fees in full because each time the Park has been refinanced again before the amount of the principal attributable to the loan fee has been repaid.

(6) Some of the expense claimed by the Applicant in connection with improvements to the Park's water distribution system were not allowed as operating expenses, as shown on Exhibit H to the Staff Report, because the Park is sub-metered and the residents pay a ready-to-serve fee and higher use rate than the Park pursuant to the tariffs set by the Public Utility Commission to establish a fund for maintenance, repair, improvement and replacement of the water system. Therefore, expenses for those purposes are to be paid out of the fund and are not allowable as operating expenses or as a capital improvement expense.

(7) A summary of the expenses disallowed by staff is set forth in Exhibits C-5 to C-10.

e. The Park is well maintained and contains a large recreation building with an exercise and crafts room, a

billiards room, an auditorium, a TV room, a kitchen, a swimming pool, a jacuzzi, saunas and a coin-operated laundry. Sewer and trash services are provided to the residents as part of the current rent.

f. No evidence was offered by the Applicant concerning the amount of the Applicant's investment in the Park, which includes the eleven (11) new spaces, the return being earned on that investment or the return being earned by comparable mobilehome parks, as is required by the Guidelines for a fair return application.

g. The gross profits analysis, which is set forth in the Staff Report and estimates whether and to what extent the Park is maintaining its dollar profit plus some increase for inflation since the last hearing on an application by the Park, shows that some rent increase is appropriate for profit maintenance and that monthly space rent increases of $14.29, or rent increases ranging from 2.86% to 3.09% would increase the Park's annual rental income by $69,792.36 and would increase the Park's gross profit by 75% of the increase in the CPI.

Section 4. The Board finds, based upon the findings contained in Section 3 that monthly space rent increases of $14.29, or increases ranging from 2.86% to 3.09%, for 407 of the Park's spaces, as shown on Exhibit A hereto, would be fair just and reasonable. This increase may not be charged or collected until proper notice of the rent increase pursuant to the Mobilehome Residency Law has been given by the Park to the affected residents.

Section 5. Any challenge to this Resolution, and the findings set forth therein, must be filed within the 90 day statute of limitations set forth in Code of Civil Procedure

Section 1094.6 and Section 4708(c) of the Carson Municipal Code.

PASSED, APPROVED and ADOPTED this 28th day of February, 2001.

CHAIR, CARSON MOBILEHOME
RENTAL REVIEW BOARD

ATTEST:

SECRETARY